

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA ) NO. 4:19-CV-649  
)  
)  
VS. ) Houston, Texas  
) 11:48 a.m.  
)  
GEORGE DANIEL MCGAVITT ) OCTOBER 15 2020

\*\*\*\*\*

SENTENCING

BEFORE THE HONORABLE GRAY H. MILLER

UNITED STATES DISTRICT JUDGE

VOLUME 1 OF 1

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General Order 94-15, United States District Court, Southern District of Texas.

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## P R O C E E D I N G S

(Defendant present.)

THE COURT: Thank you. Have a seat, please.

All right. The Court calls Criminal Case

11:48:47

7 -- I'm sorry -- criminal case, 19-649, United States of America vs. George Daniel McGavitt.

MR. THOMAS: Lewis Thomas on behalf of Mr. McGavitt. Good morning, Your Honor.

THE COURT: Good morning, sir.

11:49:04

MS. ZACK: Sherri Zack on behalf of the United States, Your Honor. Good morning.

THE COURT: Good morning, Ms. Zack.

11:49:16

All right. We do have some folks on the telephone who are listening in. I guess for the purposes of the record, we have the victim coordinator, Ms. Miles?

MS. ZACK: Miller.

THE COURT: Miller.

MS. ZACK: Keisha Miller.

11:49:28

THE COURT: Keisha Miller. All right. And we have the victims on the phone as well?

MS. ZACK: And the family, yes.

THE COURT: And the family.

MS. ZACK: And I believe Special Agent Robert Guerra may be on the phone, too. He was the agent here.

11:49:38

THE COURT: Yes, my law clerk says that Special

1 Agent Guerra is on the phone; and we have Ms. Reyes from  
2 probation also on the phone.

3 All right. So with that, I am going to  
4 start.

11:49:52

5 Mr. McGavitt, this is a sentencing hearing  
6 in your case, and I want to start by briefly describing the  
7 Court's sentencing procedures.

11:50:04

8 The U.S. Supreme Court has held in the  
9 *Booker* case that the sentencing guidelines are advisory and  
10 not mandatory for judges. *Booker* requires the sentencing  
11 court to consider the guideline ranges, but it permits the  
12 Court to tailor the sentence in light of other statutory  
13 concerns as well.

11:50:16

14 The Court in the exercise of its  
15 sentencing discretion will rely on the factors set out in  
16 Section 3553(a) to fashion an appropriate sentence in your  
17 case, to achieve the Congressionally mandated purposes of  
18 sentencing as set forth in the Sentencing Reform Act of  
19 1984.

11:50:30

20 The Court will endeavor to faithfully  
21 apply the directives within the guidelines in their  
22 entirety to determine the total offense level and the  
23 Criminal History Category under the guidelines.

11:50:43

24 Thereafter, the Court will exercise its discretion to  
25 determine the appropriate sentence. In doing so the Court

1 will give considerable weight to the sentencing range  
2 calculated under the guidelines.

3 Any comments by the Court in the course of  
4 this sentencing are not to be construed as an indication  
11:50:55 5 that the Court believes that the guidelines are mandatory,  
6 or that they constrain the Court's ultimate sentencing  
7 discretion.

8 The standard of proof for factual findings  
9 in connection with sentencing is preponderance of the  
11:51:09 10 evidence; and in determining whether that standard has been  
11 met, a presentence report is generally considered  
12 sufficiently reliable to be used by the trial court as  
13 evidence in making the factual determinations which are  
14 required by the advisory guidelines.

11:51:22 15 Now, in your case, I have reviewed the  
16 presentence report which was prepared by the probation  
17 department.

18 Let's see, Ms. Zack, there are no  
19 objections to the presentence report by the government; is  
11:51:35 20 that correct?

21 MS. ZACK: There's no objections, Your Honor.  
22 There is a -- a tiny addition to the addendum as to the  
23 amount of restitution.

24 THE COURT: Yes. I saw that. It was filed  
11:51:50 25 yesterday, or day before?

1 MS. ZACK: Yes. And it -- the original amount  
2 submitted to probation was \$40,333.02.

3 THE COURT: Yes.

4 MS. ZACK: That didn't take into account the  
11:52:02 5 monies the family expended from 6-19 to 10-20, which is a  
6 \$517 difference, so the total would now be \$40,850.08.

7 THE COURT: All right. So that's the amount of  
8 restitution that's been requested?

9 MS. ZACK: At this time, yes, Your Honor.

11:52:21 10 THE COURT: All right. Thank you.

11 Now, there were objections filed on behalf  
12 of the defendant to the presentence report. I have gone  
13 through those. I have looked at probation's responses and  
14 the government's responses. The first three just dealt  
11:52:38 15 with factual issues, which I think have been resolved by  
16 the probation department, and have no impact on the  
17 guideline calculations.

18 So four through seven, would you like to  
19 say something about those, or would you like to just stand  
11:52:53 20 on what you filed?

21 MR. THOMAS: Judge, you know, we have reviewed  
22 the response by the government and probation. We would --  
23 my client is seeking to testify concerning the allegation  
24 of sexual assault, which is a significant enhancement. I  
11:53:07 25 don't know if the Court wants to hear evidence.

1 In regards to our written motion, or  
2 written objections, he certainly urges to the Court that he  
3 did not -- he did travel to Arkansas for the purpose of  
4 meeting with the complainant in this case. He acknowledges  
11:53:23 5 that. He certainly has pled guilty, and we had the factual  
6 basis at the plea.

7 However, my proffer would be that when  
8 Mr. McGavitt went to the property, they met in a barn.  
9 Apparently, during approximately ten to 15 minutes after  
11:53:43 10 the encounter began, a brother of the complainant knocked  
11 on the door of the barn and at that point no further  
12 contact occurred. There was kissing and hugging prior to  
13 this; however, there was no sexual contact. They did not  
14 have sexual intercourse, no oral sex, no any kind of sex.

11:54:05 15 At that point, that was the only contact  
16 between Mr. McGavitt and the complainant. He left the  
17 premises. He walked to his vehicle that was parked down  
18 the street, and that was the only time that he had ever  
19 encountered the complainant in person. So we would ask the  
11:54:23 20 Court, if the Court would be willing to entertain  
21 testimony, we would have that to offer.

22 With regards to the other objections that  
23 we filed, there's the enhancement for the sadistic nature  
24 of the -- one of the videos that was produced. We just ask  
11:54:38 25 the Court -- I certainly don't need the Court to review it,

1 but there is no mention of pain with regards to the  
2 complainant during the production or discussion of that  
3 photograph afterwards, in any of the discovery that I have  
4 received.

11:54:54

5 I would ask the Court to rule based on the  
6 definition that the Fifth Circuit has laid out that that's  
7 not a sadistic content. And the other objections, we would  
8 just stand on our written pleading at this time.

11:55:10

9 THE COURT: All right. Ms. Zack, what do you  
10 have to say about all of that?

11:55:28

11 MS. ZACK: Your Honor, first, I believe, as the  
12 Court has laid out, that the PSR is considered credible for  
13 purposes of this hearing. In addition to the allegations  
14 in the PSR concerning the sexual contact, the letter  
15 submitted to the Court by the victim lays out those  
16 instances in detail. There is no evidence or anything to  
17 make this Court believe that what the victim is saying is  
18 in any way an exaggeration, an enhancement, or anything  
19 else other than the truth. And the things that she says  
20 are so detailed and descript as to lend credibility to  
21 them.

11:55:49

22 Additionally, she even talks about a  
23 third-party that saw the defendant at outside youth group  
24 walking away, so this is -- the government believes  
25 wholeheartedly what the victim has put forward. The

11:56:11



1 defendant clearly has a right to say whatever he wants to  
2 this Court to the extent that the Court will allow him to,  
3 but the government believes not only did he engage in  
4 sexual intercourse with this child, or sex acts with this  
5 child that meet the definition, but he caused her to put  
6 foreign objects inside her body, into orifices that are  
7 considered sexual by definition, and that that is sexual  
8 conduct.

9                   So I believe that even if the Court were  
10 to find that he didn't physically touch her, which I don't  
11 believe the Court will find, given what she's stated and  
12 what the evidence is, the fact that he caused her to  
13 penetrate her body with foreign objects which counts as  
14 sexual contact by definition, the penetration of the vagina  
15 with any foreign object, whether it be digitally or  
16 otherwise, counts. And she recounts several instances,  
17 including one in particular with a butter knife and a hair  
18 brush. So, either way, there was sexually -- sexual  
19 conduct that meets the definition.

20                   As to this sadomasochistic enhancement,  
21 there doesn't have to be an outcry saying that there was  
22 pain. The Court can find, based on the objects that were  
23 caused to be inserted, that pain could happen. The victim  
24 does not have to say, It was painful. In their inherent  
25 nature it can be found to constitute sadomasochistic

1 conduct. So our position is as we stated in our response.

2 THE COURT: All right. Thank you, Ms. Zack.

3 I think with respect to the defendant's  
4 position, Mr. Thomas, that he did not have sexual

11:58:06

5 intercourse with the complainant, I am going -- I am going  
6 to assume that he will testify to that effect.

7 MR. THOMAS: Yes.

8 THE COURT: But, I am going to find that he did  
9 have sexual intercourse with the complainant based upon the

11:58:22

10 victim-impact letter, which I read, from the victim  
11 herself, in which she alleges two instances of sexual  
12 intercourse. So I think by a preponderance of the evidence  
13 standard, that has been proved.

14 So I am going to overrule your objections

11:58:41

15 Number 4, Number 5, Number 6. With respect to Number 7,  
16 you objected to the including the pending state charge,  
17 which is unresolved at this point, and to which the  
18 defendant has pled not guilty. I am not going to consider  
19 that for any purposes in this case.

11:59:04

20 MR. THOMAS: Judge, I understand the Court's  
21 ruling. Just so that I can make sure I have preserved what  
22 I need to for Mr. McGavitt, would the Court accept my  
23 proffer that the defendant would testify to the facts that  
24 we -- that I described during my proffer?

11:59:15

25 THE COURT: That is -- that is what I am

1 saying, yes.

2 MR. THOMAS: Thank you, Judge.

3 THE COURT: Yes. All right. So having ruled  
4 on the objections, the Court adopts the presentence report,  
11:59:29 5 and these are the guidelines' findings: The total offense  
6 level is 43, with a Criminal History Category of 1. That  
7 yields a recommended guideline sentence of life in prison,  
8 supervised release from five years to life, a fine range  
9 from 50,000 to \$500,000.00, restitution in an amount to be  
11:59:52 10 determined or agreed upon.

11 Is there an agreement with respect to the  
12 amount of the restitution, Mr. Thomas?

13 MR. THOMAS: Judge, I spoke to Ms. Zack just a  
14 few minutes ago. I saw that there was the ECF notice  
12:00:06 15 yesterday that was filed, but I, frankly, did not open the  
16 one containing restitution, and before today I didn't have  
17 any information concerning that. It may be something that  
18 I can agree on at some point, but I haven't even spoken to  
19 Mr. McGavitt about it yet.

12:00:18 20 THE COURT: We will leave that pending.

21 MS. ZACK: Absolutely, Your Honor, and I will  
22 get with defense counsel and hopefully we can come with a  
23 stipulated order in the next two weeks. If we can't, we  
24 will ask for a hearing, Your Honor.

12:00:27 25 THE COURT: All right. Very good. Thank you.

1 Let's see. The special assessment of \$100 for each of the  
2 three counts --

3 THE COURT REPORTER: Judge --

4 THE COURT: Yes.

12:00:29

5 THE COURT REPORTER: -- Rhonda is saying they  
6 can't hear you on the phone.

7 THE COURT: Is that better, Rhonda? Can you  
8 hear me on the phone? I'm sorry, I had my face mask on.

12:00:55

9 So, let me -- let me continue. Let me  
10 know if you can't hear.

11 The restitution amount is going to be --  
12 remain open at this point. Special assessment of \$100 for  
13 each of the three counts to which the defendant pled; the  
14 \$5,000 JVT A assessment on each count, I am going to -- I  
15 don't think I am going to impose that, in view of his  
16 indigence, and the restitution --

12:01:14

17 MS. ZACK: Right.

18 THE COURT: -- amount that's been requested.

19 MS. ZACK: Thank you, Your Honor.

12:01:22

20 THE COURT: All right. So, based upon that,  
21 Ms. Zack, what do you have to say with respect to  
22 sentencing?

12:01:35

23 MS. ZACK: Your Honor, as a matter of order,  
24 how you want this to go. The victim has requested that her  
25 statement be read in court. Does the Court want me to do

1 that now, or do you want me to make my legal argument  
2 first? How does the Court wish to proceed?

3 THE COURT: I think statement first and then  
4 your legal argument will be good.

12:01:47

5 MS. ZACK: Okay. This is the statement written  
6 by the identifying victim in this case.

12:02:07

7 "I was 12, almost 13-year-old girl. My  
8 life was normal, full of sleepovers, school, and friends.  
9 After being home schooled for most of my life, I decided to  
10 try online school. Little did I know that that would be  
11 the biggest mistake of my life. Following a teacher's  
12 instructions, I started to play Roblox" -- R-O-B-L-O-X --  
13 "and there you were. You signalled me out, walked your  
14 Avatar up to mine, and said one word I would regret  
15 responding to for years to come, the word 'hello.'

12:02:27

16 "A conversation began and continued for  
17 about a week. Then you demanded that an account be  
18 created. After trying Instagram, you landed on Facebook.  
19 You wouldn't let me see you. In fact, you told me that you  
20 were about 30 to 35 years younger than you actually were.

12:02:44

21 "You became very demanding, and when I  
22 tried to back out, you began to threaten me. I was  
23 unnerved, but I still thought you were 16. That was a huge  
24 mistake. You asked me to call you after nonstop  
25 conversation all day. I had brushed off the first threat,

12:03:04

1 not recognizing how serious it was. That night, I  
2 FaceTimed you. I ignored the feeling of panic rising up.  
3 When you answered the call, the light was off, and for one  
4 week after that, it stayed almost completely dark. The  
5 only light was from the TV, which you always had your back  
6 to, and the red flare of a cigarette and lighter."

12:03:25

7 Your Honor, I'm receiving word that they  
8 can't hear us on the phone. Is that still the case?

9 THE COURT: I don't know.

12:03:56

10 THE LAW CLERK: I don't know what to do about  
11 it. Hang up the conference and restart it maybe?

12 THE COURT: Let's try that.

13 THE LAW CLERK: Do you want to say that into  
14 the microphone, what we're going to do?

12:04:10

15 THE COURT: We are having difficulties with the  
16 folks on the phone not being able to hear what is going on.  
17 If they can't hear me, how do I tell them to hang up and  
18 start over again?

19 MS. ZACK: I am texting the agents. And I will  
20 text the victim witness, who will communicate to that.

12:04:26

21 THE COURT: Okay.

22 MS. ZACK: I am going to tell them to hang up  
23 and call back in.

24 THE COURT: We will try it again.

12:04:53

25 MS. ZACK: He said they did that.

1 (Conference call placed.)

2 THE COURT: All right. Let me ask.

3 PROSECUTOR: Oh, they say they can hear each  
4 other but they can't hear any of us.

12:05:37

5 THE CASE MANAGER: Okay. Now this is Rhonda.  
6 Now we can hear you, but we haven't heard anything for the  
7 last ten or 15 minutes.

8 MS. ZACK: Okay.

12:05:53

9 THE CASE MANAGER: And we have got a couple of  
10 victims and the victims coordinator and the special agent  
11 all -- and probation all on the phone.

12:06:09

12 MS. ZACK: Okay. Maybe, Your Honor, can I make  
13 a suggestion? Since I just started reading, maybe we just  
14 summarize that we went through the guidelines, the Court  
15 accepted the guideline calculation; that we have deferred  
16 restitution in the hope to agree within two weeks with  
17 defense, or we will set up a hearing; and that no one has  
18 made any arguments at this point about sentencing; and that  
19 I just started reading the statement, and I can start over.

12:06:29

20 THE COURT: Okay. Ms. Zack is reading the  
21 victim's impact letter, and she's going to restart that  
22 letter from the beginning.

23 MS. ZACK: Okay. Is that acceptable to --

12:06:44

24 THE COURT: So let us know if that is not  
25 acceptable, please.

1 UNIDENTIFIED MALE VOICE: Fine with us.

2 UNIDENTIFIED FEMALE VOICE: Fine with us.

3 THE COURT: Okay. Thank you.

4 MS. ZACK: Okay.

12:06:54 5 THE COURT: All right. Ms. Zack.

6 MS. ZACK: Thank you, Your Honor.

7 "I was 12, almost -- I was a 12, almost  
8 13-year-old girl. My life was normal, full of sleepovers,  
9 school and friends. After being home schooled for most of  
10 my life, I decided to try online school. Little did I know  
11 that would be the biggest mistake of my life. Following a  
12 teacher's instructions, I started to play Roblox, and there  
13 you were. You singled me out, walked your avatar up to  
14 mine and said one word I would regret responding to for  
12:07:06 15 years to come, the word 'hello.'

16 "A conversation began and continued for  
17 about a week, then you demanded that an account be created.  
18 After trying Instagram, you landed on Facebook. You  
19 wouldn't let me see you. In fact, you told me that you  
12:07:40 20 were 30 to 35 years younger than you actually were. You  
21 became very demanding; and when I tried to back out, you  
22 began to threaten me.

23 I was unnerved, but I still thought you  
24 were 16. That was a huge mistake. You asked me to call  
12:07:55 25 you after nonstop conversation all day. I had brushed off



1 the first threat, not recognizing how serious it was. That  
2 night, I FaceTimed you. I ignored the feeling of panic  
3 rising up when you answered the call. The light was off.  
4 And for one week after that, it stayed almost completely  
5 dark. The only light was from the TV, which you always had  
6 your back to, and the red flare of a cigarette and lighter.  
7 You would barely talk. You would text on Facebook  
8 Messenger most of the time. I couldn't figure out what my  
9 problem was, but I wouldn't stop moving around. In fact, I  
10 tried to end the call because I didn't want you looking at  
11 me.

12 "Whenever I would get up, you would text  
13 me and tell me to sit back down because you said, 'I like  
14 to look at you.' I ended the call after that.

15 "At the end of that same week, while I was  
16 on the call, you asked me to take off my clothes. I  
17 refused and ended the call. But you said that if I didn't,  
18 I would be sorry.

19 "At that point, I knew that I had messed  
20 up. I didn't know how to delete the account, but I had  
21 convinced myself that I could handle this without anyone.  
22 You kept calling, and one night I answered again. The  
23 light was on and when I saw you, a kind of fear hit me that  
24 I cannot explain. I knew it was too late. You laughed at  
25 my reaction. The first word you said to me was 'surprise.'

1 "Over the next months you threatened my  
2 life. You told me that you would sell me. You told me  
3 that you wanted me dead. But when you wanted something of  
4 me, I was beautiful, pretty, and sexy. Almost everything  
12:09:36 5 you wanted from me was sexual. At 13 I was still trying to  
6 figure out what's normal for a girl. I was still coming to  
7 terms with my -- with me changing and getting older. You  
8 knew this and would tell me this was normal.

9 "I can't count the number of pictures you  
12:09:53 10 wanted me to send, or the number of videos. On FaceTime  
11 every single night you would ask why I was still clothed.  
12 And if I would build up the courage to try to fight back,  
13 whatever I would have to do that night would be worse than  
14 normal. I will never forget the night that I was supposed  
12:10:10 15 to put a butter knife in an area I won't mention because  
16 you said I had been a bad girl. I would cry, and you would  
17 sit on the other side of the screen and laugh.

18 "I couldn't get away from you. My grades  
19 were struggling because I had to talk to you 24/7. If I  
12:10:28 20 wasn't talking -- if I wasn't texting you, I had to be on a  
21 call. I couldn't even FaceTime my teachers for an online  
22 quiz. I was two months behind in school because I was  
23 texting you all day, and on a FaceTime all night. I would  
24 have to fall asleep at 1:00 a.m. and wake up at 6:00 for  
12:10:48 25 school. Within three months, the free, bubbly, carefree

1 girl that I knew myself to be became isolated, depressed,  
2 and suicidal.

3 "One night my brother couldn't sleep and  
4 he came knocking to my door and asked who I was talking to.

12:11:04

5 I had to come up with a reason, but I already knew it was  
6 too late. From then on you started to tell me if I didn't  
7 do something, he would be hurt, too. You told me to make  
8 my parents sound abusive so that if anyone came across the  
9 chat, you would look like the good guy. I wanted to laugh

12:11:22

10 when you said that because it was the most outrageous lie  
11 I had ever heard.

12 "I couldn't function anymore. I mentally  
13 and emotionally shut down. My parents and I started to  
14 fight over school and over stupid things. I would lock

12:11:37

15 myself in my room, or the bathroom, and cry because I  
16 couldn't handle it. At night, I wasn't even allowed to  
17 shower without talking to you. I would pray every day for  
18 God to get me out of this situation alive, but when weeks  
19 would pass and you would ask me to go to strip clubs so

12:11:55

20 that I would know how to do it properly, I became hurt and  
21 angry at God.

22 "As time went by I was plunged deeper and  
23 deeper into depression. I began to think the world would  
24 be a better place without me. Day after day, I was called  
25 road kill, a slut, a whore, a stripper, and many more.

12:12:11

1 "I needed a way out and I couldn't find  
2 one. I made up friends so I would have an excuse not to  
3 text you for a few hours so that I could do school. One  
4 day I was down at my swing set with my brother, and we were  
5 spinning each other around on the swings, when I checked  
6 messenger and saw three words and a picture that I can  
7 still see when I close my eyes. You said, 'I see you,'  
8 with a picture of the pond that we were no more than 200  
9 feet from.

10 "I felt the color drain from my face. I  
11 told my brother we had to leave right then. When he  
12 questioned my panic, I made up a stupid excuse why we had  
13 to leave. I lived in fear for almost eight months. After  
14 four months, however, you said you were going to marry me.  
15 You wanted four kids from me. You were very specific:  
16 Three girls and one boy. I was scared to find out what  
17 would happen to the kids if I wasn't what you wanted.

18 "One day you called me and showed me  
19 wedding rings. I was so emotionally numb, I didn't even  
20 respond -- respond -- I didn't even respond. I just  
21 remember looking away with tears in my eyes knowing I  
22 couldn't cry because you would see it as a weakness. You  
23 would laugh whenever you would see me so scared that I  
24 wanted to cry for help.

25 "I began slitting my wrists. One night, I

1 had had enough. I pushed my leggings up to my thighs and  
2 made you watch me. With every cut, I would give you the  
3 reason I cut. I cut my legs 42 times that night. You told  
4 me that I would pay for what I had done. I had no idea  
12:13:51 5 that my punishment would be the source of my nightmares to  
6 this day.

7 "You tried several things to break me.  
8 The one that got close to breaking me was when you asked me  
9 to take a little glass bottle that I had used for a fairy  
12:14:05 10 house when I was younger, dump the glitter that was in it  
11 down the sink. I was told to fill it with my blood  
12 instead. I held back tears with memories of my dad and I  
13 making that fairy house and how we laughed about how tiny  
14 we had made everything. I got so mad that I didn't talk to  
12:14:23 15 you for a week.

16 "Two weeks after that you said you were  
17 coming to get me. You sent pictures of the road, as you  
18 drove. I planned to run away that Wednesday. I was going  
19 to leave. I was scared that you would find me and hurt my  
12:14:37 20 family. I had my bag packed, and I went to youth group at  
21 the church.

22 "During worship I left, grabbed my bag,  
23 and got to the end of the block until I realized that I was  
24 scared of you hurting my family. But if I would have  
12:14:51 25 let -- left, it would kill them. So I turned around and

1 started walking back. Through a big hole in the wood fence  
2 a hand appeared, palm up, as if you wanted me to take it.  
3 I decided to walk around it, and you grabbed me and pulled  
4 me through the fence. You raped me. You let me go in the  
12:15:08 5 parking lot, and my youth pastor even saw you walking back  
6 to the car.

7 "My dad came and picked me up. I kept my  
8 mouth shut. My eyes teared up as I watched you follow my  
9 dad's truck back to my house. I had to explain why I was  
12:15:23 10 struggling, but all I said was, 'School is stressful, and I  
11 can't handle it.' That was my silent scream for help.

12 "You called me that night and you had a  
13 great time, that you will be around for a while, and that  
14 you wanted to see me again. I started crying and cried  
12:15:39 15 myself to sleep that night. The next morning, I found that  
16 you had tried to come down our driveway and you had run off  
17 the road and gotten your truck stuck in the ditch. My dad  
18 helped you out of that ditch.

19 "The next day, I went to our barn to check  
12:15:54 20 on my rabbits. You dragged me by my arm into the room  
21 beside our stall and raped me again for 45 minutes. When  
22 you were done, you told me to 'Get the hell out of here.'  
23 When I was halfway across the barn on the way out, you  
24 asked if I wanted to go with you. I just shook my head.  
12:16:12 25 And the last thing I heard you say before I shut the door

1 was you say, 'I hope you are ready to be a mother.'

2 "I pretended to be pregnant for a couple  
3 of weeks so that I didn't have to do anything sexual.

12:16:27

4 My -- I stole a pregnancy test from my mom because I was  
5 terrified that you had changed my life forever with a  
6 child. I told my parents, and a week later I was put in a  
7 behavioral hospital for my safety.

12:16:43

8 "You stole so much from me. You stole the  
9 experience of my first kiss. You stole my virginity. You  
10 stole my feeling of safety anywhere. We had to change  
11 churches. I had to deal with my youth pastor telling  
12 everyone that I lied about what had happened, and my  
13 children's pastor telling my best friend that I was mental,  
14 and needed to be treated differently.

12:16:59

15 "I didn't and still don't feel safe in my  
16 own home. I literally couldn't even be out in my front  
17 yard without going to the tree line and making sure you  
18 couldn't really see me if you were there. I had to earn  
19 every bit of trust back, which I am still working on a  
20 year-and-a-half later.

12:17:17

21 "An amazing guy has come into my life, but  
22 it took me three months to see the difference between  
23 torture and control and true affection and love. I feel  
24 like I have to look over my shoulder for the rest of my  
25 life. I want my life back. I want myself back. But

12:17:30

1 because that can't happen, I want justice to be served.

2 "Your sins and mistakes, I have to live  
3 with, but you will rot in jail for it. I am so glad that  
4 the Lord didn't bless you with a child from me. Being a  
12:17:48 5 dad is a blessing, whether a psycho dad or not. You don't  
6 deserve that joy.

7 "You can't control me anymore. I will  
8 live my life normally, and I will use my story to help  
9 others and prevent this from happening to anyone else. No  
12:18:03 10 one deserves what I went through, and I made sure you  
11 wouldn't do this to anyone else. You are finished, and I  
12 am free. I think it's time to celebrate. You may have  
13 made me fall, but you didn't break me. Remember that."

14 THE COURT: Thank you, Ms. Zack. All right.  
12:18:22 15 And your argument on sentencing?

16 MS. ZACK: Your Honor, the government's  
17 position is the defendant deserves to be sentenced to life  
18 in prison. The guidelines are at a 43 because they had to  
19 be reduced down to a 43, even with acceptance of  
12:18:38 20 responsibility.

21 The defendant's behavior is indescribable.  
22 The words that come to mind clearly are things like  
23 heinous, abhorrent, cruel, hateful, but nobody can say  
24 better what happened and how this affected the victim than  
12:18:59 25 she said. And as much as the defendant denies having



1 sexual contact, besides what the victim says, Your Honor,  
2 there are chats and Facebook messages between the two where  
3 after the sexual encounters, he's questioning whether she's  
4 pregnant. If they never had sex, how could she get  
5 pregnant?

12:19:19

6 He knows what he did, and he caused this  
7 child such pain, and this family such pain, that he should  
8 never have an opportunity to do that to any other family.  
9 He controlled this child's life for nine months. Every

12:19:41

10 waking moment he wanted her attention. He used the  
11 Internet and a ruse to get her attention. He pretended to  
12 be somebody he was not, and by the time she figured out who  
13 he was, she believed she couldn't get away.

14 He made her insert foreign objects into  
15 her body. He made her -- he shamed her. He bullied her.  
16 He threatened her. He threatened her family. No  
17 13-year-old should ever have to deal with those types of  
18 burdens on their own.

12:20:00

19 And often we hear arguments, Well, she  
20 could have told somebody, she could have done this, she  
21 could have done that. Well, she is under no obligation to  
22 do any of that. She is a child. The age of consent in  
23 Arkansas is 16. The defendant knew that. In fact, he had  
24 researched it. In the chats were the date of her 18th  
25 birthday because he believed they were going to get married

12:20:19

12:20:37

1 on her 18th birthday.

2                   The torture that she endured, Your Honor,  
3 is -- we will never feel that kind of pain, hopefully, but  
4 knowing that he can never do this again to anybody else is  
12:20:59 5 the best thing that can be done for the victim in this  
6 case, for her family.

7                   Under the 3553(a) factors Your Honor has  
8 to consider the nature of the offense, and the nature of  
9 the offense, I think, is very clear here. The  
12:21:16 10 characteristics of the defendant, Your Honor, I believe,  
11 that his manipulation and his use of the Internet, of  
12 ruses, of causing this child to shame herself, cut herself,  
13 become suicidal, certainly goes to describe the nature of  
14 the human being that stands before you.

12:21:38 15                   He manipulated a child to fuel his sexual  
16 deviance. Whether he has a criminal history or not  
17 shouldn't matter at all because what he did is in and of  
18 itself enough to justify the sentence the government is  
19 asking for.

12:21:58 20                   What message does that send to the public  
21 about respect for the law? I think absolutely the right  
22 message, especially in this day and age when most of our  
23 children are online going to school, because of COVID or by  
24 choice. Children are at risk for predators like this  
12:22:18 25 defendant every time they log on, and the public needs to

1 know that people that do this to children are being  
2 appropriately punished and taken off the streets.

3                   There is -- I don't believe this would  
4 cause any disparity, Your Honor. I have been before this  
12:22:37 5 Court and seen this Court sentence others that have done  
6 similar things -- manipulated children, had sex with them,  
7 posted images online, and come into physical contact with  
8 them -- get sentences of 960 months.

9                   Based on the statute here, though, the  
12:22:56 10 Court can impose a life sentence, any sentence up to life,  
11 from ten years, up to life. And 960 months, as the Court  
12 has done in the past, clearly is tantamount to life in this  
13 particular case.

14                   Your Honor, I believe all the facts and  
12:23:14 15 circumstances here support a sentence that will prevent  
16 this defendant from ever coming into contact with the  
17 public, with children, with anybody else. He is a  
18 predator. There is no counseling in the world that can  
19 change who he is or what he is capable of, and unless he is  
12:23:38 20 in prison for the rest of his life, any other child that he  
21 has access to, whether virtually or in person, is at risk,  
22 and that is why the government is asking for a sentence of  
23 life, and that at a later date we will deal with  
24 restitution.

12:23:55 25                   THE COURT: Thank you, Ms. Zack.

1 Mr. Thomas.

2 MR. THOMAS: Your Honor, thank you.

3 On behalf of Mr. McGavitt, Mr. McGavitt is  
4 a 46-year-old man standing before the Court, has

12:24:06

5 acknowledged his wrongdoing, and has pled, and acknowledged  
6 the things that he has been charged with. He is a man with  
7 a 9th grade education with zero criminal convictions in his  
8 life. He's got a 9th grade education. He grew up here in  
9 the Pasadena area. His dad, an Army veteran, and his

12:24:21

10 mother was a homemaker.

11 Your Honor, Mr. McGavitt, certainly  
12 recognizes and takes no issue with the online aspect of  
13 this case. Respectfully, to the complainant, there is --  
14 has been no -- nothing produced to the -- our defense that  
15 says that the coercion occurred in the manner except for  
16 the statement of the complainant. And with respect to the  
17 complainant's ability and, obviously, right to say that,  
18 there is nothing that's reflected in the discovery that we  
19 have received that demonstrates that coercive nature of  
20 this situation.

12:25:00

21 And, certainly, Mr. McGavitt is a  
22 46-year-old man, and was 45 at the time, certainly the  
23 complainant was 13, and I don't take away that it's the  
24 adult's responsibility to be an adult and that is certainly  
25 our position before this Court. However, to the extent

12:25:13

1 that those statements have been made, Judge, we just  
2 respectfully urge the Court to consider there is a  
3 different account of this. He certainly received the  
4 images. He certainly caused the complainant to produce  
5 them. We are not in any dispute about that.

12:25:29

6 Judge, Mr. McGavitt, if the Court was to  
7 consider a sentence within the range of the statutes at  
8 issue here, we would urge 15 to 20 years would be adequate  
9 to deter the defendant from future conduct and to take into  
10 account the serious nature of this offense considering the  
11 fact that he is a first offender. In 20 years Mr. McGavitt  
12 will be 66 years old. He will not be in a position to  
13 reoffend. He will be on, certainly, the strict conditions  
14 of supervised release if the Court would consider that. He  
15 certainly would be under the deterrent of a future -- any  
16 possible violation of those conditions would cause him to  
17 be rearrested and reimprisoned at a later date.

12:25:50

12:26:06

18 Your Honor, Mr. McGavitt -- he is  
19 remorseful for what occurred. He certainly has expressed  
20 that in the statement of the PSR, and I think he will  
21 express it again today in public. Based on all of these  
22 arguments, Judge, we respectfully request no more than 240  
23 months be assessed in this case.

12:26:24

24 THE COURT: Thank you, Mr. Thomas.

12:26:38

25 Mr. McGavitt, you have the opportunity, if

1 you wish, to say anything that you would like to say prior  
2 to my determining your sentence.

3 THE DEFENDANT: I know I did wrong, Your Honor.  
4 I know I caused her pain and all that. I am really sorry  
12:26:54 5 for everything I ever done to her. I didn't mean it, but I  
6 take responsibility for it, what I done. I hope you will  
7 forgive me, Your Honor, and the state. I hope everything  
8 goes all right.

9 THE COURT: Thank you, sir. All right.

12:27:13 10 All right. The Court has considered the  
11 guidelines and all the 3553(a) factors and finds that a  
12 sentence within the guidelines is consistent with and takes  
13 into account all of the purposes of 3553(a). So therefore  
14 pursuant to the Sentencing Reform Act of 1984, it is the  
12:27:30 15 judgment of the Court that the defendant George Daniel  
16 McGavitt is hereby committed to the custody of the Bureau  
17 of Prisons to be imprisoned for a term of life as to Count  
18 1, 360 months as to Count 2, and 120 months as to Count 3  
19 to be served concurrently for a total term of life in  
12:27:49 20 prison.

21 Upon release from imprisonment, the  
22 defendant shall be placed on supervised release for a term  
23 of 15 years as to Counts 1 through 3 to run concurrently.  
24 Within 72 hours of release from the custody of the Bureau  
12:28:01 25 of Prisons, the defendant shall report in person to the

1 probation office in the district to which the defendant is  
2 released.

3                   While on supervised release, you must not  
4 commit another federal, state, or local crime, shall comply  
12:28:12 5 with the standard conditions that have been adopted by this  
6 court, abide by any mandatory conditions required by law,  
7 and shall comply with the following additional conditions.

8                   You must participate in an education  
9 services program and follow the rules and regulations of  
12:28:25 10 that program. Such programs may include high school  
11 equivalency preparation, English as a second language  
12 classes, and other classes designed to improve your  
13 proficiency and skills such as reading, writing,  
14 mathematics, or computer usage. You must pay the costs of  
12:28:40 15 that program.

16                   You must provide the probation officer  
17 with access to any requested financial information and  
18 authorize the release of that financial information. The  
19 probation office may share that information with the U.S.  
12:28:52 20 Attorney's Office.

21                   Pursuant to 18, United States Code,  
22 Section 3583(d), you shall make restitution to the minor  
23 victim number one in an amount to be determined or agreed  
24 upon within the next 90 days. As part of this condition,  
12:29:08 25 you will adhere to the schedule of payments which will be

1 attached to the judgment. You must not incur new credit  
2 card charges or open additional lines of credit without the  
3 approval of the probation officer.

12:29:20

4                   You must not have direct contact with any  
5 child you know or reasonably should know to be under the  
6 age of 18, not including your own children, without the  
7 permission of the probation officer. If you do have any  
8 direct contact with any child you know or reasonably should  
9 know to be under the age of 18, not including your own

12:29:34

10 children, without the permission of the probation officer,  
11 you must report this contact to the probation officer  
12 within 24 hours. Direct contact means written  
13 communication, in-person communication, or physical  
14 contact. Direct contact does not include incidental  
15 contact during ordinary daily activities in public places.

12:29:48

16                   You must not view or possess any visual  
17 depiction, including any photograph, film, video, picture,  
18 or computer, or computer-generated image or picture,  
19 whether made or produced by electronic, mechanical, or  
20 other means of sexually explicit conduct. You must not  
21 possess or use any computers or other electronic devices,  
22 or data storage devices, or media without the prior  
23 approval of the probation officer. If approved, you shall  
24 consent to the ongoing monitoring of all such devices. To

12:30:04

12:30:21

25 ensure compliance with the computer monitoring, you must



1 also allow the probation officer to conduct initial and  
2 periodic unannounced searches of any computers subject to  
3 computer monitoring. These searches shall be conducted for  
4 the purposes of determining whether the computer contains  
5 any prohibited data prior to the installation of the  
6 monitoring software to determine whether the monitoring  
7 software is functioning effectively after its installation,  
8 and to determine whether there have been any attempts to  
9 circumvent the monitoring software after its installation.

12:30:36

10 You must warn any other people who use  
11 these computers that the computers may be subject to  
12 searches pursuant to this condition. You agree to pay the  
13 cost of the hardware and/or software monitoring system,  
14 including any ongoing monthly service costs, in addition,  
15 with your ability to pay as determined by the probation  
16 officer.

12:30:49

12:31:03

17 You must participate in a sex offender  
18 specific treatment program and follow the rules and  
19 regulations of that program. The probation officer will  
20 supervise your participation in the program, provider,  
21 location, modality, duration, intensity, et cetera, and you  
22 must pay the costs of that program if you are financially  
23 able.

12:31:14

24 You must not reside, work, access, or  
25 loiter within 100 feet of schoolyards, playgrounds,

12:31:30

1 arcades, or other places primarily used by children under  
2 the age of 18 or where children may frequently congregate,  
3 unless approved in advance in writing by the probation  
4 officer.

12:31:45

5                   You must not seek or maintain employment,  
6 supervise, volunteer, or participate in any program, in any  
7 activity, where minors under the age of 18 could  
8 congregate, without prior written approval of the probation  
9 officer. This would include athletic, religious,

12:31:58

10 volunteer, civic, or cultural activities designed for  
11 minors under the age of 18.

12                   You must have no contact with the victim  
13 or the victim's families -- victim's family, including  
14 letters, communication devices, audio or visual devices,  
15 visits, or any contact through a third-party without prior  
16 written consent of the probation officer.

12:32:12

17                   It is further ordered that the defendant  
18 shall pay a special assessment to the United States of \$300  
19 due immediately through the United States District Court,  
20 Southern District of Texas. The Court finds that the  
21 defendant does not have the ability to pay a fine, and  
22 therefore the Court will waive a fine, and a schedule of  
23 payments will be attached to the judgment once an agreement  
24 on restitution is reached, or we have a hearing and the  
25 Court determines the amount of the restitution.

12:32:26

12:32:41

1 I do need to advise the defendant of his  
2 rights to appeal. Mr. McGavitt, you can appeal your  
3 conviction if you believe that your guilty plea was  
4 unlawful or involuntary or if there was some other  
12:32:53 5 fundamental defect in the proceedings that was not waived  
6 by your plea of guilty.

7 You also have a statutory right to appeal  
8 your sentence under certain circumstances, particularly if  
9 you believe that your sentence is contrary to law. If you  
12:33:06 10 file an appeal in this case, it must be filed within 14  
11 days of the entry of judgment. If you cannot afford to pay  
12 the costs on appeal, you can ask to proceed without paying  
13 the costs, and you have the right to have an attorney  
14 appointed to represent you on appeal if you cannot afford  
12:33:21 15 an attorney.

16 Now, do we need to dismiss any counts?

17 MS. ZACK: No, Your Honor. There is a final  
18 letter of forfeiture that I had e-mailed to Rhonda that she  
19 said she would print out for Your Honor to sign. It is  
12:33:33 20 just the same as the preliminary order of forfeiture that  
21 was signed when the plea was taken.

22 THE COURT: All right.

23 MS. ZACK: I don't believe there is any  
24 objection to it. It is just the forfeiture of those items  
12:33:45 25 that were in the indictment.

1 THE COURT: All right. Fine.

2 I do want to say for the record, that if I  
3 have misinterpreted or misapplied the guidelines in any  
4 way, that this is the sentence that I would apply  
5 considering the 3553(a) factors.

12:33:56

6 Are there any objections to the special  
7 conditions, Mr. Thomas?

8 MR. THOMAS: Not with regards to the conditions  
9 of supervised release. We would object to the sentence as

12:34:09

10 being greater than necessary, considering the  
11 characteristics and history of the defendant, specifically  
12 that he does not have any criminal conduct which he has  
13 been adjudicated for prior to this incident, and

14 considering that there was only online conduct and not

12:34:24

15 physical, sexual contact between himself and the  
16 complainant. We would ask the Court to reconsider the  
17 sentence of life as greater than necessary.

18 And the second thing I would add, Judge,  
19 is that I do request a placement within the State of Texas.

12:34:40

20 THE COURT: All right. I'll make that request  
21 to the Bureau of Prisons, that he be placed in a facility  
22 within the State of Texas. That is only a recommendation.  
23 They are not required to follow that. And I understand  
24 your contention, but I --

12:34:54

25 PROBATION OFFICER REYES: Cynthia Reyes from

1 probation.

2 THE COURT: Yes.

3 PROBATION OFFICER REYES: Your Honor, we just  
4 need something on the record regarding the JVCA, a finding  
12:35:03 5 of indigence or something to that effect.

6 THE COURT: Okay. I think you missed that, but  
7 I did specify that I am not imposing that because I do find  
8 that the defendant is indigent, and --

9 PROBATION OFFICER: Okay. Thank you.

12:35:14 10 THE COURT: -- in view of the restitution  
11 amount that has been requested. So thank you for pointing  
12 that out, but I think that was part of time when you were  
13 not able to hear what was going on. Thank you, Ms. Reyes.

14 PROBATION OFFICER REYES: Thank you, Your  
12:35:25 15 Honor.

16 THE COURT: All right. Is there anything else?

17 MS. ZACK: Nothing from the United States, Your  
18 Honor.

19 THE COURT: All right.

12:35:28 20 MR. THOMAS: May I have just one moment?

21 THE COURT: Yes.

22 (Discussion off record between the  
23 defendant and his counsel.)

24 MR. THOMAS: Judge, that is all I have. Thank  
12:35:38 25 you.

1 THE COURT: All right. Thank you. We're  
2 adjourned then. Thank you.

3 (Concluded at 12:35 p.m.)

4 COURT REPORTER'S CERTIFICATE

5  
6 I, Kathleen K. Miller, certify that the foregoing is a  
7 correct transcript from the record of proceedings in the  
8 above-entitled matter.

9  
10 DATE: Dec. 2, 2020

/s/ Kathleen K. Miller

Kathleen K. Miller, RPR, RMR, CRR